XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.706/2007

APPELLANT Sadhu alias Banda, S/o Puchak, Caste Dhurwa, Age 40 years, Occupation *Charvaha*, Resident of Gram Chindgur Pujaripara, Thana Darbha, District Bastar (C.G.)

Versus

RESPONDENT State of Chhattisgarh through Police Station Darbha, District Bastar

CRIMINAL APPEAL u/s 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

D.B.: HON'BLE SHRI L.C BHADOO, J, & HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(10.10.2007)

L.C. Bhadoo, J:-

Shri C.R. Sahu, Counsel for the appellant.

Shri Akhil Mishra, Panel Lawyer for the State.

While arguing on the bail application, learned counsel for the appellant submits that this matter rests on the sole testimony of wife of the accused/appellant, therefore, the appeal itself may be heard finally and disposed of, to which, Mr. Mishra has no objection.

In view of the above submission, the appeal is heard finally.

(18)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA-706/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 2	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Accused/appellant has preferred this appeal questioning the legality and correctness of the judgment of conviction and order of sentence dated 18th July 2007 passed by the Sessions Judge, Bastar at Jagdalpur in S.T. No.75/2007, whereby, the learned Sessions after holding the accused/appellant guilty for commission of the offence punishable under Section 302 of the IPC, sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for 5 months.

Case of the prosecution is that on 15.4.2007 at about 5:00 p.m., accused- Sadhu alias Banda took Bal Singh (since deceased) to his house for practicing witchcraft and when Bal Singh was practicing witchcraft, some dispute arose between them, on which, the accused/appellant – Sadhu @ Banda became angry and in a heat of passion, he attacked Bal Singh with an axe on his left temporal region, head and chest. Bal Singh succumbed to those injuries on the spot. The crime was witnessed by PW-4 - Mangal Bai, wife of the accused/appellant. She informed about the incident to Soma, Soma informed to Vinodbati- wife of Phool Singh and Vinodbati in turn informed it to Phool Singh. Thereafter, Laxman, Rajan went to the spot and saw the body of Bal Singh in the courtyard of the accused/appellant. There were injuries on the body, blood was oozing out of the injuries,

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CRA-706/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

accused was not present in the house. Phool Singh informed about the incident to Sarpanch Chanu, Kotwar Durjan. Since it was night and the Police Station was far away from the place of occurrence, the matter was reported to the Police in the next morning by Phool Singh, Sarpanch and Kotwar of the village. The Police Station Incharge namely Shyamlal Patel, Assistant Sub Inspector, recorded the first information report (Ex-P/1) and merg intimation (Ex.-P/2). Thereafter, he left for the place of occurrence and prepared site plan (Ex.-P/3). After giving notices (Ex.-P/13) to the Panchas, he prepared Panchnama (Ex.-P/14)on the body of the deceased. The body was sent for postmortem examination under Ex.-P/15 to Community Health Centre, Darbha, where Dr. P.L. Mandavi conducted the postmortem on 16/4/2007 and opined that the cause of death was homicidal. He gave his report (Ex.-P/5). During the course of investigation, accused/appellant gave memorandum (Ex-P/8) and in pursuance of that, he got recovered the axe (weapon of offence) under Ex.P/9.

After completion of the investigation, charge sheet was filed in the Court of Chief Judicial Magistrate, Jagdalpur, who in turn committed to the case to the Sessions Judge, Jagdalpur for trial.

The prosecution in order to establish charge against the accused/appellant examined 7 witnesses. The statement

(20)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A 706/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of the accused/appellant was recorded under Section 313 of the Code of Criminal Procedure, in which, he denied the material appearing against him in the prosecution evidence and stated that he is innocent and has been implicated in a false case.

Learned Sessions Judge after hearing counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

We have heard Shri C.R. Sahu, Counsel for the appellant and Shri Akhil Mishra, Panel Lawyer for the State.

At the outset, Shri Sahu has not disputed the homicidal death of Bal Singh. Moreover, PW-4 – Mangal Bai, wife of the accused, who witnessed the crime in question, has categorically stated that her husband had attacked the deceased with the axe, as a result of which, he sustained injuries on the head, he fell down and died spontaneously.

PW-3- Dr.M.L. Mandavi has stated that on 16/4/2007, he conducted postmortem on the body of the deceased-Bal Singh and found following injuries :

(i) Four abrasions on the chest,

(ii) Fracture on right side first rib,

(iii) A lacerated wound on the left side of the temporal region,

(iv) Fracture of maxilla bone,

(21)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CA - 206/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

(v) Incised wound on the left occipital region of the head in size of 5cm x 1 cm x 1 cm,

(vi) Skull bone was fractured.

He opined that cause of death was haemorrhage and shock, death was homicidal in nature.

Therefore, from the above ocular and medical evidence, it is established that the death was homicidal in nature.

Mr. Sahu has not disputed the involvement of the accused in crime in question. He simply argued that in this case there is only one eye witness namely Mangal Bai (PW-4-wife of the accused). She has stated that her husband (accused) and the deceased, both were practicing witchcraft. On the fateful day, when they were practicing witchcraft, some dispute arose between them and the deceased – Bal Singh picked up the axe and tried to attack her husband namely Sadhu (accused), on which, Sadhu snatched the axe and attacked the deceased, as a result of which, he sustained the injuries and died spontaneously. Learned counsel further submits that in view of the above, it appears that this is a case of exceeding the right of private defence. He also submits that even though accused/appellant snatched the axe, but still the deceased and accused were grappling, therefore, there was every chance that the deceased might have snatched the axe and attacked the accused/appellant with it and under this apprehension, the accused after

(22)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.A - 706/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

snatching the axe from the deceased, attacked him, which proved fatal and the deceased died spontaneously.

On the other hand, Mr. Mishra supported the judgment of the trial Court.

In order to appreciate the arguments advanced by the respective counsel, we have perused the evidence of Mangal Bai, the sole witness present at the time of incident, who stated that at about 6:00 p.m., Bal Singh came to their house, at that time, she alongwith her husband was at the residence. Both the accused and deceased were practicing witchcraft, during which, they started quarrelling and the deceased – Bal Singh picked up the axe to attack her husband (accused), therefore, her husband snatched the axe and attacked Bal Singh- deceased on his head with it, as a result of which, he died on the spot. In the cross-examination, she has stated that if her husband (accused) had not snatched the axe from Bal Singh, he might have attacked him with it.

From the evidence of this witness, it has come on record that in the first instance, the deceased - Bal Singh picked up the axe to attack the accused, they were grappling, the axe and under the apprehension of attacking, the accused snatched the axe and attacked the deceased with it. As per further evidence of this witness, she has categorically stated that if her husband had not snatched the axe from Bal

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(23)

मामला क्रमांक Cri. Appeal - 706/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 7	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Singh, there was every possibility that the deceased might have attacked the accused with the axe.

For the foregoing reasons, we are of the considered opinion that there was a fear to the accused that the deceased may attack him with the axe and in that process, he snatched the axe and attacked the deceased, therefore, he has exceeded the right of private defence. The case of the accused/appellant does not travel beyond Section 304 Part-II of the IPC.

In the result, the appeal partly succeeds.

The conviction and sentence imposed upon the accused/appellant for commission of offence under Section 302 of the IPC are set aside, instead thereof, he is convicted under Section 304 Part-II of the IPC.

Looking to the number of injures sustained by the deceased, we are of the considered opinion that the sentence of R.I. for 10 years would meet the ends of justice; therefore, the accused/appellant is sentenced to undergo R.I. for 10 years.

The appellant shall be entitled for set off for the detention period during the trial, investigation and appeal.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

Shyna